

REMARKS

Formal Matters

Claim 1 has been amended to specify the subject matter of claim 43, namely a Group IIIA compound. Claim 43 is cancelled.

Claims 44-49 have been amended to change the dependency from claim 43, which is cancelled, to claim 1.

The amendments to these claims, as well as the cancellation of claim 43, were made solely in the interest of expediting prosecution, and are not to be construed as acquiescence to any objection or rejection of any claim. The Applicants reserve the right to file one or more continuation or divisional applications directed to the subject matter of the original (pre-amended) and cancelled claim.

Claims 52-63 are added as new. Claim 52 represents claim 49, indicated as allowable, re-written in independent form including all of the limitations of the base claim and any intervening claims. Claims 53-63 depend from claim 52 and correspond to currently pending claims 2, 4-8, 44-46 and 50-51, respectively.

As no new matter has been added by the amendments, the Applicants respectfully request the entry thereof.

The Applicants thank the Examiner for the indication of allowability of Claim 49.

Rejection under 35 U.S.C. §103 – Nippon Chemiphar

Claims 1-2, 4-5, 8-9, 33 and 50-51 are rejected under 35 U.S.C. §103(a) as unpatentable over Nippon Chemiphar.

The Applicants maintain, as described in the Applicants' previous responses, that Nippon Chemiphar does not disclose, teach or fairly suggest the compositions as claimed, the subject invention possesses an unexpected property, namely stability, which is not fairly taught or suggested in the cited art, and further there is no motivation to modify Nippon Chemiphar to include the amounts of FAD as claimed. However, in the interest of expediting prosecution, claim 1, and the claims that depend therefrom, have been amended to include a Group IIIA

compound as specified in claim 43, which claim is not rejected as being unpatentable over this reference.

Accordingly, since claim 43 is not rejected as unpatentable over Nippon Chemiphar and claim 1 has been amended to include the subject matter of claim 43, the Applicants believe claim 1, and the claims that depend from claim 1, to be patentable over this reference for at least this reason. As such, the Applicants respectfully submit that this rejection be withdrawn.

Rejection under 35 U.S.C. §103 – Ouyang et al (EP 1 130 111 A2)

Claims 1-2, 4-10, 33 and 50-51 are rejected under 35 U.S.C. §103(a) as unpatentable in view of Ouyang.

The Applicants maintain, as described in previous responses, that Ouyang et al. do not disclose, teach or fairly suggest the compositions as claimed- especially in view of the amendment to claim 1 as described above, the subject invention possesses an unexpected property, namely stability, which is not fairly taught or suggested in the cited art, and further there is no motivation to modify Ouyang et al. to include the amounts of FAD as claimed.

Furthermore, the enclosed declaration under 37 C.F.R. §1.131 demonstrates that the claimed subject matter of the present application was invented prior September 9, 2001, the publication date of the cited reference.

As set forth in 37 C.F.R. § 1.131:

- (a) When any claim of an application or a patent under reexamination is rejected, the inventor of the subject matter of the rejected claim, the owner of the patent under reexamination, or the party qualified under §§1.42, 1.43, or 1.47, **may submit an appropriate declaration to establish invention of the subject matter of the rejected claim prior to the effective date of the reference** or activity on which the rejection is based...
- (b) **The showing of facts shall be such, in character and weight, as to establish reduction to practice prior to the effective date of the reference**, or conception of the invention prior to the effective date of the reference coupled with due diligence from prior to said date to a

subsequent reduction to practice or to the filing of the application...
(emphasis added)

To demonstrate that the claimed invention was invented prior to the September 9, 2001 publication date of the cited reference, the Applicants herewith submit the declaration of the inventors of the instant application under 37 C.F.R. §1.131. This declaration provides a showing of facts that the inventors invented the claimed invention prior to September 9, 2001 in that the claimed inventions was reduced to practice prior to September 9, 2001.

Since the Applicants have provided a declaration and facts that show invention prior to September 9, 2001, the publication date of the cited reference, the rejection of Claims 1-2, 4-10, 33 and 50-51 may be withdrawn, which action is respectfully requested.

Rejection under 35 U.S.C. §103 – Steinbach et al. (US 4,724,204)

Claims 1-2, 4, 6, 8, 33, 50 and 51 are rejected under 35 U.S.C. §103(a) as unpatentable in view of Steinbach et al.

The Applicants maintain, as described in previous responses, that Steinbach et al. do not disclose, teach or fairly suggest the compositions as claimed, the subject invention possesses an unexpected property, namely stability, which is not fairly taught or suggested in the cited art, and further there is no motivation to modify Steinbach et al. to include the amounts of FAD as claimed. However, in the interest of expediting prosecution, claim 1, and the claims that depend therefrom, have been amended to include the Group IIIA compound as specified in claim 43, which claim is not rejected as being unpatentable over this reference.

Accordingly, since claim 43 is not rejected as unpatentable over Steinbach et al., and claim 1 has been amended to include the subject matter of claim 43, the Applicants believe claim 1, and the claims that depend from claim 1, to be patentable over this reference for at least this reason. As such, the Applicants respectfully submit that this rejection be withdrawn.

**Rejection under 35 U.S.C. §103 – Ouyang et al. (EP 1 130 111 A2) in view of Geisler et al.
(US 4,613,569)**

Claims 1-2, 4-10, 33-34, 43-48 and 50-51 are rejected under 35 U.S.C. §103(a) as unpatentable over Ouyang in view of Geisler et al.

The Applicant respectfully submit that the cited references, alone or in combination, do not disclose, teach or fairly suggest the compositions as claimed, the subject invention possesses an unexpected property, namely stability, which is not fairly taught or suggested by the et al., and there is no motivation to modify Ouyang et al. to include the amounts of FAD as claimed or to include the boric acid of Geisler et al. Furthermore, such modification would entail selectively picking and choosing certain components from Ouyang et al. and certain components from Geisler et al., while selectively disregarding certain other components, in order make this rejection. However, there is no motivation for selectively picking and choosing certain components from the references and selectively disregarding certain other components.

However, the Applicants respectfully submit that since a showing of facts that the inventors invented the claimed invention prior to September 9, 2001, the publication date of the Ouyang et al. is provided herewith, Ouyang et al. is not a proper reference and as such for at least this reason respectfully requests that this rejection be withdrawn.

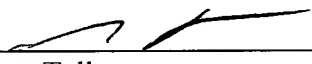
CONCLUSION

Applicant submits that all of the claims are in condition for allowance, which action is requested. If the Examiner finds that a telephone conference would expedite the prosecution of this application, please telephone the undersigned at the number provided.

The Commissioner is hereby authorized to charge any underpayment of fees associated with this communication, including any necessary fees for extensions of time, or credit any overpayment to Deposit Account No. 50-0815, order number LIFE-040.

Respectfully submitted,
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Date: 11/24/04

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